

CAPITAL PROJECTS ADVISORY REVIEW BOARD

**John L. O'Brien Building
504 15th Avenue, Hearing Room A
Olympia, Washington
April 13, 2006
9:00 AM**

Final Minutes

<u>MEMBERS PRESENT</u>	<u>REPRESENTING</u>	<u>MEMBERS ABSENT</u>	<u>REPRESENTING</u>
Gerald "Butch" Reifert	Design Industry	Appointment Pending	House of Representatives (R)
Rocky Sharp	Specialty Contractor	Wendy Keller	Public Hospital Project Rvw Bd
Ed Kommers	Specialty Contractor	David D. Johnson	Construction Trades Labor
Carolyn Crowson	OMWBE		
John Lynch (Chair)	General Administration		
Rodney Eng	Cities/Counties/Ports		
Michael Mequet	Cities/Counties/Ports		
Larry Byers	Insurance/Surety Industry		
Daniel Absher	General Contractor		
Gary Ballew	Cities/Counties/Ports		
Olivia Yang	Higher Education		
Dan Vaught	School District Project Rvw Bd		
Rep. Kathy Haigh (Vice Chair)	House of Representatives (D)		
Sen. Dave Schmidt	Senate (R)		
Sen. Phil Rockefeller	Senate (D)		

STAFF & GUESTS

Nancy Deakins, GA	Michael Transue, AGC
Searetha Kelly, GA	Dick Lutz, Centennial Construction
Cheri Lindgren, Puget Sound Meeting Services	Paul Berry, CWAD
P. Johnson, OST	Darlene Septelka, King County
Dick Goldsmith, AWPFD	Ginger Eagle, WPPA
Larry Stevens, MCA/NECA	Nancy Heyen, OFM
Stan Bowman, AIA/WA	

Welcome & Introductions – Chair's Comments

Chair John Lynch called the Capital Projects Advisory Review Board (CPARB) meeting to order at 9:05 a.m.

A meeting quorum was attained. Everyone provided self-introductions.

Chair Lynch reviewed the meeting agenda, specifically the reason for the legislative session discussion topic.

Gary Ballew is leaving the Board as the representative for Cities/Counties/Ports effective May 1 to work for the City of Richland. The Washington State Association of Counties (WSAC) will appoint a new member.

Chair Lynch encouraged the subcommittees to continue to address major issues and prepare recommendations for the 2007 legislative session within the coming month. The recommendations can then be put into draft legislation for CPARB discussion at the next meeting.

Chair Lynch reported he would be unable to attend the Board's May 11, 2006 meeting.

Approve Agenda

The agenda was accepted as presented.

Approval of March 9, 2006 Minutes

Ed Kommers moved, seconded by Butch Reifert, to approve the minutes of March 9, 2006 as presented. Motion carried.

Nancy Deakins noted for the record that Michael Mequet and Gary Ballew are voting for the Cities/Counties/Port.

Legislative Session Discussion

Chair Lynch reported he did not become aware of the competitive negotiation bill until the end of the session. Following last month's meeting discussion; a letter was prepared to the Governor's office recommending a veto. The CPARB was not engaged as the bill moved through the legislative process. A concern was the CPARB's role during the legislative session on bills that should have been forwarded to the Board based on legislation establishing the Board.

Carolyn Crowson asked whether the Governor responded to the letter. Chair Lynch replied there was no veto of the bill and no written response was received.

Senator Schmidt said if the bill comes up independently and not through the CPARB, it's difficult for the Board to take a position without first discussing it. The previous board tried to reach a conclusion that the legislators could then recommend to colleagues knowing it was a consensus issue. He said he supported legislation to resurrect the board to hopefully avoid "patchwork" legislation. As an example, the education committee should not decide the appropriate bid limit for contracting issues. He recommended the CPARB should review the bid limits bill. A consistent policy addressing when it's appropriate to do a project in-house versus initiating a competitive bid process is necessary.

Chair Lynch said the CPARB meets once a month and sometimes things move very quickly through the Legislature. Senator Schmidt said an alternative is to appoint an executive committee of the Board to provide recommendations. CPARB should review matters that are not of an urgent policy issue to ensure review by labor, private business, and government entities.

Rodney Eng stated the CPARB should have a standing position on legislation that impacts all public works methods that have not been reviewed by the Board. Following the 2007 legislative session, it is hoped the alternative public works legislation will be under control. The Board should have more time to evaluate other ideas and potential new legislation.

Discussion ensued concerning potential issues that could be outside the Board's authority.

Senator Schmidt suggested the Board could recommend forwarding issues not requiring immediate action to the CPARB for further review. A reasonable filtering process to ensure development at a reasonable cost to the taxpayers is appropriate.

Representative Haigh arrived at the meeting at 9:22 a.m.

Senator Rockefeller arrived at the meeting at 9:23 a.m.

Michael Transue, AGC, said state statute outlines four specific areas for the CPARB's review. Three of the four sections are specifically related to alternative procurement methods. The Board needs to be careful that its purview of issues is not too broad that it becomes difficult to complete work. The Board should be mindful of the current statutory authority and consider those confines of the Board's authority.

Ed Kommers noted representatives from the general and specialty contractors and labor testified against the competitive negotiation bill. Representative Haigh also spoke against the bill, but it still passed. From there it went to the Governor and by that time, the CPARB was organized and a letter was sent as authorized by the Board encouraging the Governor to veto that section of the bill and return the legislation to the Board for further review. The competitive negotiation bill was a specific charge of CPARB. It was particularly disappointing to see the process continue without Board review.

Senator Schmidt suggested a subcommittee could meet once or twice and draft recommendations concerning an appropriate procedure to address issues, the role of the Board at the legislative level, and whether expanding the Board's authority is appropriate and if so, in what areas. The Legislature has allocated hundreds of millions of dollars for projects. If the money is not spent wisely, other projects will suffer.

Chair Lynch said there appears to be two issues - how broad should the Board's purview reach and how to define the boundaries; and defining the process and what triggers the Board to review a specific proposal or issue.

A small task force could convene between the CPARB's regular meetings and return with a proposal. Legislators could identify issues that warrant the Board's review rather than the Board deciding on its own to engage in a particular issue.

Mr. Ballew said seeking expansion is appropriate with the next legislative session after proving what the Board is capable of accomplishing this year, rather than pursuing potential expansion now.

Representative Haigh conveyed that by statute, the Board no longer functions after next year. A bill is required to reappoint the Board. She said she assumes the CPARB will forward a recommendation supporting reappointment as well as a recommendation concerning the alternative public works process. The Board and subcommittees are working well and functioning efficiently. The Board has to focus and deliver the work products associated with the goals set, together with clear recommendations to the Legislature next year.

Mr. Eng said as the Board moves forward it must be mindful of the strengths and weaknesses represented by its members. As an example, the Board may not be qualified to speak to expediting new vessel construction for the Washington State Ferries. There are bills the Legislature could present to the Board that might not necessarily generate a response from the Board.

Chair Lynch said when a bill is presented to reappoint the CPARB, the scope of the committee could be defined to ensure legislative review is a delegated responsibility.

Nancy Deakins added that current legislation enables the Board to look at issues dealing with public works efficiencies and improvements to public works processes. She referred to duty #3, “Develop and recommend to the Legislature policies to further enhance the quality, efficiency, and accountability of capital construction projects through the use of traditional and alternative delivery methods in Washington, and make recommendations regarding expansion, continuation, elimination, or modification of the alternative public works contracting methods.” The Board developed a strong strategic plan and prioritized issues last fall and decided to tackle the reauthorization issues first and prioritize other issues at a later date. Potential legislation may be important enough to those on the Board that it becomes a priority to be considered this year.

Senator Rockefeller conveyed there is no better group of people with a broader set of experience than those represented at the table to help identify a future role of the Board and the best way to carry it out. Work to shape a recommendation for reauthorization should begin now. He said he endorses Representative Schmidt’s idea that an ad hoc group should think ahead to next year’s session and work on a recommendation with the legislators as part of that process. Part of the challenge is handling all the different legislative proposals coming into the process. The letter to the Governor had no discernible impact. Another challenge is the lack of a unified set of statewide policies.

Olivia Yang expressed support for a more comprehensive system and appointment of a task force to review issues related to a mechanism to create a clearinghouse. Another potential item the task force could look at over the next month may be to gain consensus from other parts of government as to the value of the Board’s work. The CPARB could invite someone from the Governor’s office to participate in the process.

Representative Haigh noted the Board is lacking the appointment of a member representing the House of Representatives Republican Caucus. She asked the Board to consider sending a letter to the leadership seeking assistance in filling the position. Chair Lynch offered to work with staff and develop a draft letter. Senator Schmidt said he would contact Toby Nixon.

Carolyn Crowson moved, seconded by Gary Ballew, to form a task force consisting of CPARB legislative members and authorize the Chair to make the assignments. Motion carried.

Public Comments

There were no public comments.

Daniel Absher arrived at the meeting at 9:47 a.m.

Reports from Subcommittees

Data Collection – Carolyn Crowson and Darlene Septelka

Ms. Crowson reported Ms. Septelka prepared a project data items draft worksheet for the subcommittee’s review that integrates the agreed upon categories. She reviewed the data items that include start date, costs, negotiated pricing, prime contractor selection including successful and unsuccessful firms, subcontractor selection process, and other data sets. The subcommittee discussed the best time to collect the data and whether to conduct a subjective question and answer survey. The subcommittee decided to combine the two methodologies and look at the subjective and number components of the data collection. A registration process was created to collect the milestones both at the beginning and end of the project. The subcommittee considered the questions that should be added back into the process.

Chair Lynch asked if the data could be collected for completed projects. Ms. Crowson indicated it is possible. Demonstrating to the Legislature how data collection works and what data has been collected on completed

projects is important. The schools have offered to provide some of the information. The subcommittee anticipates completing the work associated with combining the two methodologies within the next month.

Darlene Septelka announced a future meeting has been scheduled with the data analyst to implement an internet-based system. The subcommittee will use the schools as a test group since there is interest to collect data for education purposes. The subcommittee is on task to deliver by next month the subjective questions that will help measure the success of a project.

In response to Chair Lynch's question concerning strategy, Ms. Septelka confirmed the goal is to put the system in place and begin collecting data through General Administration's information services group. Next month, the subcommittee will have the list of data finalized. The Board could move forward and collect the data needed during the next few months to prepare for the next legislative session. Ms. Septelka asked if the school districts could provide data during the summer if an online system is available. Dan Vaught replied that it's possible.

Ms. Crowson said the subcommittee recommends a project cost threshold of \$5 million and greater for data collection.

Representative Haigh asked whether \$50,000 is adequate to complete the data collection work. Ms. Septelka said she, Ms. Crowson, and Chair Lynch will review the budget later in the day.

Reauthorization of Alternative Public Works – Rodney Eng

Mr. Eng reported all three task forces met last month. The Owner & Project Eligibility Task Force's major issue is creating a Centralized Project Board for approval of both the project using General Contractor/Construction Manager (CC/CM) and owners qualified to undertake a GC/CM project. A major caveat is current owners with GC/CM authority would not need to seek review board approval for the project. However, the owner would be required to present the project to the review board for examination and comment. The task force is looking at issues surrounding the board such as how large it should be and competencies. The task force expects to present a recommendation to the CPARB next month followed by developing draft legislation.

Mr. Eng reported Ed Kommers was unable to attend the last Maximum Allowable Construction Cost (MACC) Task Force meeting. Mr. Eng noted that Mr. Kommers presents issues on behalf of subcontractors that generate good discussions. The task force does not want to bring forward a recommendation and draft legislation prior to considering all the issues.

The subcommittee developed a three-part recommendation for the Board's consideration regarding the timing for setting the MACC:

- The MACC shall not be set until the construction drawings are 90% complete
- Limited "early works" (e.g., demolition site preparation) bid packages may be bid, awarded, and work commenced prior to setting the MACC
- Certain limited major bid packages (e.g., mechanical and steel) may be bid and awarded, but the award is contingent on the parties setting the MACC. No work can be performed on the packages until the MACC is set.

Board members discussed the 90% threshold and developing criteria. Mr. Eng said the owner would determine when the construction documents are 90% complete. Chair Lynch noted the 90% threshold is a natural milestone within the contract process.

Mr. Absher said the 90% requirement is less confusing than it seems. It is difficult to write all the elements included in a 90% completed drawing.

Ms. Septelka said the 90% requirement should be defined. She cautioned that there are still changes between 90% and 100%. Mechanical and electrical are not at 90% with a 90% set of drawings.

Mr. Reifert offered that it is his experience that mechanical and electrical are closer to 100% with a 90% set of construction documents. The remaining 10% of the completion of the set is related to coordination rather than design changes.

Mr. Eng stated the major purpose of the 90% requirement is to provide pricing protection. It is a significant move to preserve negotiation for many jurisdictions until near the end of a job while attempting to remain true to the original concept of the GC/CM. The subcommittee will begin drafting legislation absent a definite recommendation.

While the Contractor Issues Task Force has not reached a recommendation, members are moving forward working on issues and agreeing on language. Mr. Eng reviewed the subcommittee's conceptual agreement on two points concerning *change order administration* as noted on page 4 of the April 6, 2006 *Reauthorization Subcommittee Meeting Notes*.

It is not recommended to draft language regarding *standard subcontract agreements*; however, there is a list of specific requirements the subcommittee will consider for statute language.

Discussion ensued concerning options the task force is considering related to *rewriting subcontractor eligibility standards/requirements/qualifications*, the bidding process, and whether representation from curtain wall contractors would be helpful in the process.

The subcommittee is working on clearly defining specified *general conditions*. Mr. Eng said he has been presented with draft legislative language. The general conditions are limited to the labor component, but authorization to permit allowances and reimbursement for certain items is under consideration. The allowances and reimbursements will not count against the 30% maximum that the GC/CM can perform.

Discussion followed about elimination of subcontractor listing requirements (39.30.030) from RCW 39.10.061(6) for sub-bids. Chair Lynch noted the bill was originally adopted for the benefit of subcontractors. Mr. Eng added the purpose of the bill is to limit the ability to "sub shop."

Mr. Kommers noted the statute applies to all bid packages. It is inconvenient and not practical for all bid packages to require the listing of HVAC, plumbing, and electrical. There may be third and fourth tier subcontractors that object to the elimination of listing requirements. For this application, the listing requirements are for the convenience of the owners.

Mr. Vaught inquired whether interest rates associated with the change order issue are across the board for all public works or just GC/CM. Mr. Eng replied it could be applicable for all projects. The task force is limiting its focus currently to GC/CM.

Discussion ensued concerning the concept behind review boards, and whether it applies only to school districts and hospitals, or other agencies that have review boards. Mr. Eng said the concept for schools and public hospitals is to eliminate the review boards and use one centralized board. Those not requiring approval are existing owners who have GC/CM; i.e., cities with a population greater than 70,000. The make-up of the centralized board is under discussion. One suggestion is panels comprised of four people.

Ms. Yang asked if the intent of a change order for interest rates is to inform the Legislature so that the actual rate is set in each individual contract. Mr. Eng answered no. There was draft legislation that discussed an interest rate of 3% over prime. The Revised Code of Washington (RCW) Chapter 39.76 provides for a 1% per month interest rate. He said he understands the interest rate would be established by statute.

Chair Lynch recessed the meeting at 10:33 a.m. to 10:53 a.m. He suggested providing time for Stan Bowman to review an issue prior to completing subcommittee reports.

Stan Bowman referred to a copy of a letter dated April 5, 2006 from the Washington Construction Industry Council to the City of Sunnyside. The city issued an RFP for a remodel of City Hall. The City of Sunnyside is not eligible to undertake the Design Build (DB) construction method based on the size of the project and other factors. There is no central authority within the state to enforce procurement laws as they pertain to local governments. Mr. Bowman said he wanted to ensure the Board is aware of the issue. The city has since agreed to withdraw the RFP for the remodel and has issued an RFP for architectural services.

Chair Lynch commented that Title 39 does not address enforcement. Mr. Bowman said the only enforcement mechanism is to challenge the RFP and submit a bid protest. Mr. Ballew added the State Auditor checks Benton County's procurement methods. Discussion followed about the Auditors' findings and how findings are handled.

Representative Haigh said the Board could offer outreach and education to the smaller entities. Mr. Bowman stated he presented the issue to the Association of Washington Cities (AWC). AWC and Municipal Research and Services Center (MRSC) provide training opportunities that cities can take advantage of.

Senator Schmidt said the issue reinforces the need for a consistent policy. There are thousands of small entities across the state. Policy information could be made available to MRSC.

Continue Subcommittee Reports and Discussion

Expansion Subcommittee – Oliva Yang

Ms. Yang requested the Board approve appointing Tom Balbo as Rick Slunaker's replacement. Chair Lynch noted that Mr. Balbo is an architect and a contractor and is very experienced with GC/CM and contracting in general.

Daniel Absher moved, seconded by Butch Reifert, to approve replacing Rick Slunaker with Tom Balbo on the Expansion Subcommittee. Motion carried.

Ms. Yang referred to the subcommittee's six-month plan. In February and March, the subcommittee discussed and reached conclusions concerning attributes of appropriate GC/CM projects. The subcommittee met last week and discussed GC/CM owner attributes. The subcommittee determined the six attributes are also appropriate for DB with some modifications. It was decided the attributes do not apply to Job Order Contracting (JOC). The subcommittee will meet again on May 5, 2006 to complete discussions concerning owner attributes, review owner attributes for JOC, and discuss whether the six attributes are sufficient, or if they would be in addition to those identified in the current legislation pertaining to population and revenues. The legislature is interested in establishing a set of standard attributes. There was subcommittee consensus to develop attributes that focus to ensure a successful project. Ms. Yang reviewed the six attributes listed on page 2 of the April 7, 2006 *Expansion Subcommittee Meeting Notes*.

Chair Lynch asked whether the subcommittee will be prepared to present its recommendation to the Board in May concerning how owner and project qualifications will be used in lieu of the current system. Ms. Yang

replied the subcommittee will try to develop recommendations concerning both owner and project attributes. Chair Lynch noted it is an expansion issue, but that it might become part of the recommendations for the 2007 legislation. The Board needs to discuss its approach towards a more uniform system.

Mr. Eng asked if the centralized board administers the criteria. Ms. Yang confirmed that will be the proposal. Mr. Eng and Ms. Yang both acknowledged that the subcommittees are on parallel tracks for project and owner issues.

Mr. Kommers stated it will be simpler to retain DB, GC/CM, and JOC as separate processes rather than creating one process and one set of criteria. There should be some thought concerning which owner group should be entitled to use general order contracting and likewise with DB and GC/CM. The list of criteria is a start, but the hurdle is higher for DB. He said he envisions draft legislation including the three components. Chair Lynch said he agreed. The criteria for DB and GC/CM are not significantly different, versus JOC, which is very different. Ms. Yang said the subcommittee acknowledged the differences between the two procurement methods.

Discussion ensued concerning drafting related legislation. Representative Haigh said she has staff resources that can work with the draft legislation and attend the Board's May meeting. Senator Schmidt conveyed that his staff could also assist with drafting legislative language. Ms. Septelka pointed out the Data Collection Subcommittee will work with a team to draft the necessary legislation.

Discussion concerning the body of knowledge already collected for the data collection project ensued.

Dick Lutz, Centennial Construction, inquired whether there is a need to collect data for DB and JOC projects. Ms. Septelka said information was collected with the first study for several of the projects. The Joint Legislative Audit Review Committee (JLARC) was only interested in collecting GC/CM data with the second study. The subcommittee is looking at all three deliveries.

Additional dialogue concerning the timing for drafting legislation for CPARB review followed.

Ms. Crowson inquired whether it's appropriate to invite those individuals that are drafting legislation to attend the May meeting. Representative Haigh agreed and asked that an invitation should be extended to Marsha Riley and Diane Smith as well.

CPARB Strategies – Are we on track?

Chair Lynch said it appears the subcommittees are on track and he is feeling relative confident with the progress to date.

Senator Schmidt commented that 90% of the 2006 legislative bills will likely not involve the CPARB. He suggested it might be beneficial to have data and information available to entities that deal with repetitive issues.

Mr. Vaught asked if the subcommittee envisions review boards for the other two procurement options or whether a single board will suffice. Mr. Eng replied it is an issue of discussion for the task force. There is a movement towards a review board for DB but there has been no discussion concerning JOC.

Discussion ensued about the pros and cons of developing a review board for Design Build. Mr. Bowman's group is looking at the issue and it will be a topic for conversation at the next meeting. Chair Lynch added all three methods require review.

Set Next Meeting Agenda

The next meeting is scheduled for May 11, 2006 at the O'Brien Building, Hearing Room A. The meeting agenda will follow a similar format with additional time to discuss the reports.

Boardmembers discussed summer meetings. Chair Lynch reported the CPARB will need to meet in June and July.

Representative Haigh requested adding a discussion for a possible social gathering of the Board during the summer.

Adjournment

Chair Lynch adjourned the meeting at 11:39 a.m.

Prepared by Cheri Lindgren, Recording Secretary
Puget Sound Meeting Services